

No. 82-1050

Office-Supreme Court, U.S.  
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**In the Supreme Court of the United States**  
OCTOBER TERM, 1982

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MARGARET M. HECKLER, SECRETARY OF HEALTH  
AND HUMAN SERVICES, APPELLANT

v.

ROBERT H. MATHEWS, ET AL.

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ON APPEAL FROM THE UNITED STATES  
DISTRICT COURT FOR THE NORTHERN  
DISTRICT OF ALABAMA

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JOINT APPENDIX

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REX E. LEE,  
*Solicitor General*  
*Department of Justice*  
*Washington, D.C. 20530*  
*(202) 633-2217*

ROBERT W. BUNCH,  
*Peck, Slusher & Bunch*  
*118 West Dr. Hicks Boulevard*  
*Florence, Alabama 35630*  
*(205) 766-4490*

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Jurisdictional Statement filed December 20, 1982  
Probable Jurisdiction Noted March 21, 1983

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# Relevant Docket Entries

DATE	NR	PROCEEDINGS
1979		
Dec. 11	2	Complaint with Exhibit "A" attached— filed— all—Page 1-4
11		Summons and complaint issued—del to USM—s11
1980		
Jan. 16		S&C returned executed on U.S. Atty 12/14/79; on Atty Gen 12/18/79 & on HEW 12/18/79—filed—bth
Feb. 13	3	Motion of deft for Extension of Time to Answer, filed, cs—bth—2/18/80—Order dated February 14, 1980 extending time for deft to Answer 30 days from date of Order—(McFadden)—entered— cm—bth—Pages 5-6
Mar. 12	4	ANSWER of deft to complaint with certified rec- ord of proceedings before Bureau of Hearings & Ap- peals attached thereto, filed all—Pages 7-59
May 19	5	ORDER dated May 19, 1980—The issues are to be submitted on written briefs; the brief for plffs shall be filed on or before JUNE 30, 1980; the brief for deft to be filed on or before AUGUST 4, 1980. (Hancock)—filed. Entered May 19, 1980—cm— bth—Pages 60-61
July 7	6	Motion of plffs to file supplemental briefs and oral argument, filed, cs, del JFG, s11—Granted 7/11/80, (Guin), filed. Entered July 14, 1980— cm—bth—Page 62
7	7	Motion of plffs to amend complaint, filed, cs, del JFG, s11—Granted 7/11/80 (Guin), filed. Entered July 14, 1980—cm—bth—Page 63
7	8	Motion of plff to certify as class action, filed, cs, del JFG, s11—see 8/10/82 order—certified—Page 64
Aug. 17	9	Motion of plffs for declaratory judgment, filed, cs, del JFG, s11—Pages 65-66
1981		
Oct9	10	Brief (Supplemental) of the deft in support of mo- tion to affirm, filed—cs—jrc—Pages 67-77
9	11	Memorandum of law of plff, filed—cs phm—Pages 78-93
13	12	Stipulation of parties re numerosity requirement of Rule 23(a)(1), filed—cs phm (let)—Pages 94-95

1982  
Aug. 10

- 13 ORDER dated 8-10-82 that this cause is CERTIFIED as a class action defined as all applicants for husbands' insurance benefits under Section 202(c) of the Social Security Act 42 USC 402(c)(2) whose applications, requests for reconsideration, hearings, or Appeals Council reviews have been denied solely because of statutory requirement that husbands must have received more than one-half of their support from their wives in order to be entitled to benefits; and who received notice of such denials on or after the 60th day prior to 12-11-79; that Robert H. Mathews serve as a representative of said class; and that plff Mary M. Mathews is DISMISSED as a plff, filed (Guin), ENTERED 8-11-82 cm phm—Pages 96-97
- 24 14 MEMORANDUM OPINION dated 8-24-82, filed (Guin), ENTERED 8-25-82 cm phm—Pages 98-106
- 24 ORDER dated 8-24-82 that Section 334(g)(1)(B) and Section 334(g)(3) of the Social Security Amendments of 1977, P.L. 95-216, are unconstitutional and that deft immediately pay to Mr. Mathews and the members of the class he represents those benefits they would have received had it not been for the operation of Section 334(g)(1)(B) and that deft immediately undertake to identify and notify all members of the class of this decision and order; that deft shall, within 60 days, submit for court's approval a plan for identifying and notifying the class members; that plff may file objections to propose plan within 10 days and that court retains jurisdiction for purpose of implementing this order, filed (Guin), ENTERED 8-25-82 cm phm—Pages 107-108
- Sep. 22 15 Notice of appeal to the Supreme Court of defendant from order and memorandum entered 8/25/82, filed—dwm cm-dwm—Pages 109
- 22 16 Certificate of defendant of service of notice of appeal to Supreme Court, filed—dwm—Page 110
- 22

IN THE UNITED STATES COURT FOR THE  
NORTHERN DISTRICT OF ALABAMA  
NORTHEASTERN DIVISION

Civil Action No. CA 79W5251 NE

Filed: Dec. 11, 1979

ROBERT H. MATHEWS, 424-09-7494, AND  
MARY M. MATHEWS, 423-34-6303 AND OTHERS  
SIMILARLY SITUATED, PLAINTIFFS

v.

PATRICIA HARRIS, SECRETARY OF HEALTH, EDUCATION  
AND WELFARE, UNITED STATES OF AMERICA,  
DEFENDANTS

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COMPLAINT

1. Jurisdiction of this Court is invoked pursuant to 42 U.S.C. 405(g); Section 422.210 of the Social Security Administration Regulations No. 22 (20 CFR 422.210); 28 U.S.C. Section 1343 (4); and, 28 U.S.C. Sections 2201 and 2202. This suit is authorized pursuant to the Federal Old Age, survivors, and Disability Insurance Benefits Program (42 U.S.C. Sections 401, et seq.). The jurisdiction of this Court is invoked to secure benefits payable to the spouse of a wife covered under the Social Security Act in accordance with the Social Security Act, as amended.

2. Plaintiff Robert H. Mathews is a 63 year old male residing in Cullman, Alabama. Plaintiff Robert H. Mathews retired from the United States Postal Service effective October 18, 1977. Plaintiff Mary M. Mathews, wife of plaintiff Robert H. Mathews, retired from a local bank in Cullman, Alabama, in June, 1977. On December 15, 1977, plaintiff Robert H. Mathews filed an application for husband's insurance benefits under the Social Security Act on the record of his wife, Mary M. Mathews. On March 13, 1978, plaintiff was notified of his entitlement to benefits under the Social Security Act but that no payment could be made because of his receipt of a Government pension from the U.S. Postal Service. On October 14, 1979, plaintiff Robert H. Mathews was informed that he had exhausted his administrative

remedies when the Appeals Council, Social Security Administration, Department of Health, Education and Welfare concluded that there was no basis under the Social Security Regulations for setting aside the original denial of benefits in plaintiff's Robert H. Mathews case. (See Exhibit "A")

3. Plaintiffs bring this action on behalf of themselves as a representative of a class as defined by Rule 23, Federal Rules of Civil Procedure. The class consists of all Federal, State and local employees who are similarly situated, in that, they have been denied spouses' benefits under the Social Security Act. Plaintiff Robert H. Mathews is unable to state the exact number of the class without discovery of defendants books and records, but avers on information and belief that the class exceeds 163,000 members. The members of the class are so numerous as to make it impractical to bring them all before the Court. There are liability and damage questions of law and fact common to the class which predominate over any questions affecting individual members only. Defendant has acted and refused to act on grounds generally applicable to the class.

4. The claims of the plaintiff are typical of the claims of the class, and plaintiff Robert H. Mathews will fairly and adequately protect the interests of the class.

5. The prosecution of separate actions by individual members of the class would create the risk of (a) inconsistent or varying adjudications in different jurisdictions with respect to individual members of the class which would establish incompatible standards of conduct for defendant; and (b) adjudication with respect to individual members of the class which would, as a practical matter, be dispositive of the interests of the members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

6. The class action is superior to other available methods for the fair and efficient adjudication of the controversy.

7. Plaintiffs further aver that this cause of action should be certified as a class action under R 23 (a) and (b)(1) and (b)(2) of the Federal Rules of Civil Procedure.

8. Plaintiffs aver that the aforementioned law, as amended, is unconstitutional, in that, it is violative of the rights to equal protection under the due process clause of the Fifth Amendment, to-wit: (a) public sector retirees are discriminated against in that they are treated differently than private sector retirees with regard to spouses' social security benefits; (b) that under existing law male public sector retirees are discriminated against, in that they are treated differently than male public sector retirees with regard to spouses' benefits, in that, survivor benefits are payable to the widow of a spouse covered under the Social Security Act regardless of the degree of her dependency upon the deceased husband, while survivors benefits are payable to the widower of a spouse covered by the Act only if he meets the requirements set forth in the Social Security Act in effect in January of 1977, which provides that the widower must be receiving at least one-half of his support from his wife; (c) the spouses of public sector retirees are discriminated against, in that, they are treated differently than spouses of private sector retirees, in that, differential treatment of public sector retirees and private sector retirees constitute an invidious discrimination against public sector retirees because the spouses of public sector retirees are required to pay Social Security taxes producing less protection for their spouses than are produced by the efforts of those spouses who work and are married to private sector retirees.

WHEREFORE, Plaintiffs pray judgment against defendant in favor of plaintiffs and each member of their class: (a) enjoining the continuance by the defendant of the illegal acts and practices alleged herein; (b) requiring that defendant pay over to plaintiffs and to the members of the class the damages sustained by plaintiffs and members of the class by reason of defendant's illegal acts and practices; (c) requiring that defendant pay to plaintiffs' and to the



members of the class the costs of this suit and a reasonable attorney's fee, with interest; and (d) such other and further relief that the Court deems appropriate.

PECK, BURDINE AND SLUSHER, ATTORNEYS, P.C.  
Attorneys for Plaintiffs

By: \_\_\_\_\_  
Rodney B. Slusher  
For the Firm  
118 West Reeder Street  
Florence, Alabama 35630  
(205) 766-4490



## EXHIBIT "A"

DEPARTMENT OF HEALTH, EDUCATION,  
AND WELFARE

SOCIAL SECURITY ADMINISTRATION

P.O. BOX 2518

WASHINGTON, D.C. 20013

October 11, 1979

OFFICE OF HEARINGS AND APPEALS

REFER TO: SGC 424-09-7494

ACTION OF APPEALS COUNCIL  
ON REQUEST FOR REVIEW

Mr. Robert H. Mathews

Post Office Box 54

Cullman, Alabama 35055

Dear Mr. Mathews:

After the request for review of the hearing decision was received, a careful study was made of your case, the applicable law and regulations, the record before the administrative law judge, and the contentions made in support of the request.

Section 404.947a of Social Security Administration Regulations No. 4 (20 CFR 404.947a) provides that the Appeals Council will review a hearing decision where: (1) there appears to be an abuse of discretion by the administrative law judge; (2) there is an error of law; (3) the administrative law judge's action, findings, or conclusions are not supported by substantial evidence; or (4) there is a broad policy or procedural issue which may affect the general public interest.

The Appeals Council has concluded that there is no basis under the above regulations for granting the request for review. Accordingly, the hearing decision stands as the final decision of the Secretary in your case.

If you desire a court review of the hearing decision, you may commence a civil action in the district court of the United States in the judicial district in which you reside within sixty (60) days from the date of receipt of this letter. It will be presumed that this letter is received within five (5) days after the date shown above unless a reasonable

showing is otherwise made. See Section 205(g) of the Social Security Act, as amended (42 U.S.C. 405(g)) and section 422.210 of Social Security Administration Regulations No. 22 (20 CFR 422.210).

If a civil action is commenced, the Bill of Complaint should name the Secretary of Health, Education, and Welfare as the defendant and should include the social security number(s) shown at the top of this notice.

Sincerely yours,

David G. Danziger  
Member, Appeals Council

IN THE UNITED STATES COURT FOR THE  
NORTHERN DISTRICT OF ALABAMA  
NORTHEASTERN DIVISION

Civil Action No. CA 79W5251-NE

Filed: Mar. 12, 1980

ROBERT H. MATHEWS, 424-09-7494, AND  
MARY M. MATHEWS, 423-34-6303  
AND OTHERS SIMILARILY SITUATED, PLAINTIFFS

v.

PATRICIA HARRIS, SECRETARY OF HEALTH, EDUCATION  
AND WELFARE, DEFENDANT

---

ANSWER

Comes now the defendant and for answer to complaint filed herein states that:

1. In reference to paragraph 1 of the complaint, the defendant admits the allegations contained therein, except to deny that the court has jurisdiction pursuant to 20 C.F.R. §422.210, 28 U.S.C. §1343(4) or 28 U.S.C. §§2201 and 2202.

2. In reference to paragraph 2 of the complaint, the defendant admits the allegations contained therein upon the belief that plaintiff intended to state that he retired from the United States Postal Service effective November 18, 1977, and not October 18, 1977.

3. In reference to paragraph 3 of the complaint, this paragraph contains conclusions of law and speculative assertions of plaintiff and not averments of fact to which responses are required; but insofar as responses may be deemed required, defendant denies.

4. In reference to paragraphs 4, 5, 6 and 7 of the complaint, these paragraphs contain conclusions of law and not averments of fact to which responses are required; but insofar as responses may be deemed required, defendant denies.

5. In reference to paragraph 8 of the complaint, the defendant denies the allegations contained therein.

In accordance with the provisions of section 205(g) of the Social Security Act (42 U.S.C. 405(g)), defendant files herein as part of the answer a certified copy of the transcript of the record including the evidence upon which the findings and decisions complained of are based.

The findings of fact of the Secretary of Health, Education and Welfare are supported by substantial evidence and are conclusive.

WHEREFORE, defendant prays for judgment dismissing the complaint with costs and disbursements and for judgment in accordance with section 205(g) of the Social Security Act (42 U.S.C. 405(g)), affirming the decision complained of.

J.R. BROOKS  
United States Attorney

HERBERT J. LEWIS, III  
Assistant United States Attorney

#### CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served upon counsel for plaintiff, Rodney E. Slusher, 118 West Reeder Street, Florence, Alabama 35630, by mailing the same by first class United States mail properly addressed and postage prepaid on this the 11th day of March, 1980.

HERBERT J. LEWIS, III  
Assistant United States Attorney

IN THE UNITED STATES COURT FOR THE  
NORTHERN DISTRICT OF ALABAMA  
NORTHEASTERN DIVISION

Civil Action No. CA 79W5251-NE  
Filed: July 7, 1980

ROBERT H. MATHEWS AND MARY M. MATHEWS, ET AL,  
PLAINTIFFS

v.

PATRICIA HARRIS, SECRETARY OF HEALTH, EDUCATION  
AND WELFARE, UNITED STATES OF AMERICA, DEFENDANT

**MOTION TO AMEND**

Comes now the plaintiffs in the above styled cause and moves this Honorable Court for permission to amend the complaint heretofore filed as follows:

1. Adding the following language after the word "retirees" in the last line of paragraph 8 of the complaint: (d) The government pension offset and Section 402 (c)(1)(c) of the Social Security Act, as applied, discriminates against a non-dependent male because it grants to him less benefits than to a similar situated female. (e) The government pension offset as applied to the husband of Mary M. Mathews is discriminatory in that her social security contributions are worth less to her husband and to her family than a similarly situated male.

2. Delete the following words "public sector" from lines 1 and 3 of section 8(b) of the complaint. Substitute the word "husband" for the word "widower" in lines 4, 6 and 9 of section 8(b) of the complaint. Delete the word "deceased" from line 6 of section 8(b) of the complaint. Delete the word "male" from line 3 of section 8(b) of the complaint and substitute therefor the word "female".

PECK, SLUSHER, BUNCH, GREEN & SCHUESSLER

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Robert W. Bunch, For the Firm  
Attorney for Plaintiffs  
118 W. Reeder St.  
Florence, AL 35630  
(205) 766-4490

I certify that a copy of the foregoing Motion to Amend has been served upon all attorneys of record by mailing them a copy of same by U.S. Mail, postage prepaid this 3rd day of July, 1980.

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PECK, SLUSHER, BUNCH, GREEN & SCHUESSLER

IN THE UNITED STATES COURT FOR THE  
NORTHERN DISTRICT OF ALABAMA  
NORTHEASTERN DIVISION

Civil Action No. CA 79W5251-NE

ROBERT H. MATHEWS AND MARY M. MATHEWS, ET AL,  
PLAINTIFFS

v.

PATRICIA HARRIS, SECRETARY OF HEALTH, EDUCATION  
AND WELFARE, UNITED STATES OF AMERICA, DEFENDANT

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MOTION

Comes now the plaintiff, Robert H. Mathews, and moves this Honorable Court to certify this cause of action as a class action under Rule 23 (a) and (b)(1) and (b)(2); and that the said Robert H. Mathews be deemed a representative of the class, consisting of all husbands who have been denied husband's insurance benefits after December, 1977, and who were denied benefits at some administrative level on or after December, 1977, solely on the basis that they were the husband of a spouse covered under the act and did not meet the one-half support requirement in effect in January, 1977.

PECK, SLUSHER, BUNCH, GREEN & SCHUESSLER

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Robert W. Bunch, For the Firm  
Attorney for Robert H. Mathews  
118 W. Reeder St.  
Florence, AL 35630  
(205) 766-4490

I certify that a copy of the foregoing Motion has been served upon all attorneys of record by mailing them a copy of same by U.S. Mail, postage prepaid this 3rd day of July, 1980.



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PECK, SLUSHER, BUNCH, GREEN & SCHUESSLER

IN THE UNITED STATES COURT FOR THE  
NORTHERN DISTRICT OF ALABAMA  
NORTHEASTERN DIVISION

Civil Action No. CA 79W5251-NE

Received: October 17, 1980

ROBERT H. MATHEWS AND MARY M. MATHEWS, ET AL,  
PLAINTIFFS

v.

PATRICIA HARRIS, SECRETARY OF HEALTH, EDUCATION  
AND WELFARE, UNITED STATES OF AMERICA,  
DEFENDANTS

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MOTION FOR DECLARATORY JUDGMENT

1. Plaintiffs reallege those allegations contained in the complaint and amendments heretofore filed in the above-styled cause.

2. Plaintiffs submit that the facts avered under the existing circumstances present a real controversy between parties having adverse legal interests of such immediacy and reality as to warrant a declaratory judgment.

3. That a declaratory judgment would settle the controversy between the parties and would not cause inconvenience to said parties.

4. That Rule 57, Federal Rules of Civil Procedure, authorizes the issuance of a declaratory judgment pursuant to Title 28, U.S.C. Section 2201.

5. That one of the issues before this Honorable Court is whether Section 202(c)(2) of the Act, 42. U.S.C. Section 402(c)(2), the Pension Offset Provision applicable to husband's insurance benefits, is Constitutional.

6. Plaintiffs aver that the Government Pension Offset Provision discriminates against male public sector employees whose spouses are entitled to Social Security benefits because these males must satisfy the conditions of entitlement for husband's and widower's benefits which were in effect in January, 1977, i.e., one-half support requirement.

7. Defendant avers that the Pension Offset Provision and its legislative history, the exception clause applicable to the provision, do not offend principles of equal protection.

WHEREFORE, Plaintiffs demand judgment that the Court adjudge:

A. That Section 202(c)(2) of the Act, 42 U.S.C. Section 402(c)(2), the Pension Offset Provision, applicable to husband's insurance benefits, be declared unconstitutional.

B. That benefits be retroactively paid to plaintiff Robert H. Mathews.

PECK, SLUSHER, BUNCH, GREEN & SCHUESSLER

By: \_\_\_\_\_  
Robert W. Bunch  
Attorney for Plaintiffs  
P.O. Box 157  
Florence, Alabama 35630  
(205) 766-4490

#### CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served upon counsel for the defendant, Herbert J. Lewis, III, Assistant United States Attorney, 200 Federal Court-house, Birmingham, Alabama 34203, by mailing the same by first class United States mail, properly addressed and postage prepaid on this the 15th day of October, 1980.

\_\_\_\_\_  
Robert W. Bunch

**In the Supreme Court of the United States**

No. 82-1050

MARGARET H. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES, APPELLANT,

*v.*

ROBERT H. MATHEWS, ET AL.

APPEAL From the United States District Court for the Northern District of Alabama.

The statement of jurisdiction in this case having been submitted and considered by the Court, in this case probable jurisdiction is noted.

March 21, 1983